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SYKES, A EXAMINER

33M1/0926

ART UNIT PAPER NUMBER

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3305

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DATE MAILED: 09/26/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-7 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 1-7 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

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The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention. The specification does not clearly describe how the method functions to treat a patient having an abnormal condition, regardless of its nature and origin.

Claims 1-7 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

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Claims 1-6 are rejected under 35 U.S.C. § 103 as being unpatentable over Shimizu et al. The Shimizu reference discloses a therapeutic program in which pulse is detected before, during and after exercise. As the program progresses, the recovery rate of the patient is determined to enable an analysis of the increase in physical strength. It would have been obvious to one skilled in the art in view of this teaching to continue the program until the range and flexibility is expanded since this would provide an indication of physical strength.

Claim 7 is rejected under 35 U.S.C. § 103 as being unpatentable over Shimizu et al. in view of Takara. The Takara reference discloses a stress level measuring device which calculates stress level based on pulse value. In view of this teaching, it would have been obvious to one skilled in the art to use the Shimizu method to reduce stress by altering resting and maximum pulse rates.

35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

Claims 1-7 are rejected under 35 U.S.C. § 101 because the invention as disclosed lacks patentable utility. The utility of the disclosed method to prevent, reverse or cure autoimmune and other diseases as well as behavioral disorders regardless of the initial inciting agent therefor is questioned. Applicant has presented neither evidence to substantiate the

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claimed method nor a convincing scientific explanation of how the method operates to produce the claimed utility.

This rejection might be overcome by submitting, for example, evidence in affidavit form of scientific tests conducted or witnessed by competent, disinterested third parties. Such tests should obviously include diagnosis by competent medical personnel before and after treatment, treatment of a plurality of patients, scientific controls, etc. Mere testimonials from persons stating that they feel beneficial effects from the method would have little or no persuasive value for the obvious reasons.

The Geneen, Taus and Cornellier references are cited as disclosing systems for monitoring pulse rates.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. Sykes whose telephone number is (703) 308-2713.

ads
September 19, 1994

Angela D. Sykes

ANGELA D. SYKES
PRIMARY EXAMINER
GROUP 3300